IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12119 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 & 2: YES; 3 TO 5: NO

SHAMLAJI AROGYA SEVA TRUST

Versus

STATE OF GUJARAT

Appearance:

MR ND NANAVATI, Senior Advocate with MR PRADEEP PATEL for Petitioner.

MR ARUN D. OZA GOVERNMENT PLEADER for Respondent No.1 to 3.

MR ANANT S DAVE for Respondent No. 4

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 24/01/2001

C.A.V. JUDGEMENT

1. This petition under Article 226 of the

Constitution arises from refusal of the State Government to grant affiliation to the Homoeopathic College of the petitioner. The Education and the Health & Family Welfare Departments of the State Government are the respondents Nos.1 and 2 respectively (hereinafter referred as 'the respondent' for short), while the Chairman heading the Centralised Admission Committee is the respondent No.3 and the Central Council of Homoeopathy is subsequently joined as the respondent No.4.

2. The petitioner, a registered public trust since 1993, is running a Homoeopathic College at Godhra and proposes to open a new college at Vadodara as India's first and only women's Homoeopathic Medical College. It claims to have made initial appointments and investments for opening the new college. The M.S.University at Vadodara not having the faculty of homoeopathy, the petitioner obtained its no-objection certificate and applied for affiliation to Bhavnagar University. The Academic Council of Bhavnagar University recommended to its Executive Council to accord new affiliation to the petitioner's college on self-sufficient basis for one year from June 2000 to teach syllabus of Ist year degree course of B.H.M.S. The Executive Council of the University, by its Resolution No.7 dated 9.4.2000, accepted the recommendation of the Academic Council to accord affiliation to the petitioner's college and further resolved to take a deposit of Rs.20 lakhs. Thus, the Registrar of the University, in accordance with the provisions of Section 35 (4) of the Bhavnagar University Act, 1978 (for short the 'University Act'), forwarded on 18.4.2000 the application and all the proceedings of the Academic Council and the Executive Council to the State Government for deciding upon the question of grant of affiliation. As the State Government did not take and convey its decision despite a number of letters and representations, the petitioner approached this Court by way of Special Civil Application No.9904 of 2000, after hearing of which this Court directed the State Government to take a decision on the application of the petitioner as forwarded by the University within a period of two weeks from the date of the receipt of the order dated 25.9.2000. A pertinent observation made by this Court in the said order reads as under:

" It is also submitted by learned counsel for the petitioner that, in view of the decision of the Apex Court in JAYA GOKUL EDUCATIONAL TRUST v. COMMISSIONER & SECRETARY TO GOVERNMENT HIGHER

> EDUCATION DEPT. THIRUVANANTHAPURAM AND OTHERS, reported in AIR 2000 SC 1614, the requirement of approval of the Government is a mere formality. When the Executive Council of the University has recommended the affiliation, the Government cannot refuse such approval. I have gone through the aforesaid case of the Apex Court. The contention made by learned counsel for the petitioner appears to be correct. Since all the formalities have been completed and the approval of the Government is only left out, I am of the view that in the interest of the students of the State, an early decision by the Government is necessary."

As the State Government still failed to take a decision, the petitioner filed an application under the Contempt of Court's Act during the proceedings of which the Government undertook to take necessary decision within a period of two weeks from 15.11.2000. In the meantime, pursuant to the aforesaid direction of this Court, the State Government directed the petitioner to deposit a sum of Rs.6 lakhs in the joint name of the Registrar of Bhavnagar University and the President of the petitioner - Trust and the same was complied on 5.10.2000. Thus, even as the process of admissions for the new term was being undertaken under the Centralised Admission System, the Government delayed its decision on affiliation of the petitioner's college and, at last, by the order dated 25.11.2000, refused to accord affiliation to the petitioner's college which is now under challenge. During the present proceedings, the process of centralised admission was put off till 15.1.2001 by virtue of a statement made on behalf of the respondent.

2.1 Even as the process of seeking affiliation to the University by the petitioner was carried on, the petitioner had moved the Central Council of Homoeopathy for recognition of its college and for prior approval to make admissions of students in First B.H.M.S. degree course for the session 2000-2001. The Executive Committee of the Council had considered the matter in light of its report of inspection and decided to grant recognition to the petitioner's college subject to certain conditions which were conveyed by its letter dated 11.9.2000. It appears from the record of the inquiry held through the State Council of Homoeopathy that the matter of granting recognition to the petitioner's college was under consideration since May 1999. In fact, as early as on 25.7.1996, the Central

Council of Homoeopathy (CCH for short) had advised the petitioner to canalise their application through the State Council or the University concerned and an inspection was also carried out by the State Council on 1.6.1997 resulting into an inspection report advising the State Government to go ahead and issue permission for starting the proposed college at Vadodara. On the other hand, after refusal of the affiliation by the impugned order to the petitioner, the State Government has admittedly granted affiliation and allowed to come up for the same degree course two other colleges at Bhavnagar and Vyara.

3. Against the backdrop of facts as above, the petitioner has challenged the decision of the Government refusing affiliation as illegal, arbitrary and discriminatory and prayed for quashing the impugned decision with a writ of mandamus directing the Government to take all necessary steps for granting affiliation and allotting students for admission under the Centralised Admission System. By an amendment, it is further prayed to hold the provision of sub-section (4) of Section 35 of the Bhavnagar University Act, 1978 empowering the Government to grant or refuse the application for affiliation to be void and repugnant to the provisions of the Central Council Homoeopathy Act, 1983 and the Regulations made thereunder.

4. The CCH has taken a stand supportive to the petitioner by filing an affidavit of its Registrar-cum-Secretary. It is averred therein that the petitioner's college has been duly recognised by the Central Council and its name ought to have been included by the State Government in the Centralised Admission System and the State ought to have provided students to the petitioner's college for admission in First B.H.M.S. course. In fact, by an earlier letter dated 9.1.1992 addressed to Health Secretaries of all the States and Registrars of all the Universities having homoeopathy facilities or department, it is clarified by the CCH that it recognises a college after assessing the infrastructure and minimum facilities provided therein for degree or diploma courses and for a specified number of students. Thus, the Education and the Health & Family Welfare Departments of the State Government have emerged as the main contesting respondents and detailed affidavits are filed by the Under Secretaries of both the departments in defence of the impugned order dated 25.11.2000.

5. The impugned order denying affiliation firstly

takes note of the letter dated 21.7.2000 which is supposed to be a complaint regarding the affairs of the petitioner's college running at Godhra, pursuant to which a three-member Inquiry Committee was appointed and the proposal of the affiliation is stated to have been taken for consideration in light of the report dated 1.11.2000 of the said Committee. However, the inquiry held by the said Committee is stated to be incomplete and a decision is taken to appoint a new one-member Committee. It has to be noted here that the aforesaid inquiry was in respect of another college of the petitioner - Trust and the supposed complainant himself has disowned the complaint by stating in writing that his letter-pad was misused by some unscrupulous persons in making the complaint. In the second part of the impugned order, it is stated that the subject of necessity of a homoeopathy college is under the Health & Family Welfare Department according to the Rules of business and the petitioner ought to have obtained prior approval of the State Homoeopathic Council. It is further stated that the University ought to have submitted, along with the proposal, a report under sub-section (5) of Section 28 of the Gujarat Homoeopathic Act, 1963; and that the confidential report of the State Council which was forwarded by the petitioner to the Central Council was not bearing any signatures and hence the same was found to be unacceptable. Thereafter, the impugned order relates inadequacies of the infrastructure in the college and emphasises the fact that at the time of recognition by the CCH, the petitioner did not have a no-objection certificate from the State Government, which is stated to be inconsistent with the provisions of Section 28 of the Gujarat Homoeopathic Act, 1963. It is also stated that out of the 600 existing seats in 10 existing Homoeopathic Colleges in the State, 102 seats had remained vacant in the last year and hence the prior opinion and approval of the Health & Family Welfare Department was necessary in this case; and a college exclusively for girls is stated to be unnecessary in view of the fact that six out of ten existing colleges were having hostel facilities for ladies. Again referring to the application of the petitioner submitted to the CCH, it is stated that the petitioner did not have existing infrastructure for a women's Homoeopathic College. Referring to the Resolution of the Executive Council of the University, it is stated that the recognition by Academic Council was made assuming prior sanction of the Government and such prior sanction of the Health & Family Welfare Department was not produced by the petitioner. It is also stated that the petitioner was called upon to obtain and produce the approval of the Health & Family Welfare Department

and the same was not submitted. Lastly, it is stated that in view of all the facts a new college for girls appeared unnecessary and when it was decided to hold a detailed inquiry into the affairs of another college of the petitioner, the question of permitting the same Trust to open a new college could be considered only after receipt of the detailed report. Thus, on these grounds, the application of the petitioner for affiliation forwarded through the Registrar, Bhavnagar University is rejected.

6. It would be apposite and necessary to refer to the relevant legal provisions before examining the contentions of the parties regarding the main controversy.

The Bhavnagar University Act, 1978 (the 'University Act' for short) is enacted to establish and incorporate a teaching and affiliating university. The provision for affiliation found in Section 35 reads as under:

"Sec. 35 Affiliation:- (1) A college applying for affiliation to the University shall send a letter of application to the Registrar and shall satisfy the Executive Council and the Academic Council-

(a) that the college will supply a need in the locality having regard to the type of education intended to be provided by the College, the existing provisions for the same type of education made by other colleges in the neighbourhood, and the suitability of the locality where the college is to be established;

(b) that the college is to be under the management of a regularly constituted governing body;

(c) that the strength and qualifications of the teaching staff and the conditions governing their tenure of office are such as to make due provision for the courses of instruction, teaching or training to be undertaken by the college;

(d) that the buildings in which the college is to be located are suitable, and provision will be made in conformity with the Ordinances, for the

residence in the college or in lodgings approved by the College, of students not residing with their parents or guardians and for the supervision and welfare of students;

(e) that due provision has been made or will be made for a library;

(f) that where affiliation is sought in any branch of experimental science, arrangements have been or will be made in conformity with the Statutes, Ordinances and Regulations for imparting instruction in that branch of science in a properly equipped laboratory or museum;

(g) that due provision will, as far as circumstances may permit, be made for the residence of the Principal and some members of the teaching staff in or near the college or the place provided for the residence of the students;

(h) that the financial resources of the college are such as to make due provision for its continued maintenance and efficient working; and

(i) that the college rules fixing the fees, if any, to be paid by the students have not been so framed as to involve such competition with any existing college in the same neighbourhood as would be injuries to the interests of education;

(j) that for recruitment of the Principal and members of the teaching staff of the college there is a selection committee of the college which shall include-

(1) in the case of recruitment of the Principal, a representative of the University nominated by the Vice-chancellor, and

(2) in the case of recruitment of a member of the teaching staff of the college, a representative of the University nominated by the Vice-Chancellor and the Head of the Department, if any, concerned with the subject to be taught by such member;

(k) that the college shall comply with the Statutes, Ordinances and Regulations providing for

conditions for service including salary scales and allowances of the teaching and other academic staff of an affiliated college,

(l) such other conditions as may be specified in the Statutes in accordance with the provisions of this Act:

Provided that nothing in clause (j) shall apply to a Government college, a college maintained by the Government or a college established and administered by minority whether based on religion or language.

(2) The application shall contain an assurance that after the college is affiliated, any transference of management and all changes in the teaching staff and all other changes which result in any of the aforesaid requirements not being fulfilled or continued to be fulfilled shall be forthwith reported to the Executive Council.

(3) On receipt of a letter of application under sub-section (1) the Executive Council shall -

(a) direct a local inquiry to be made by a competent person or persons authorised by the Executive Council in this behalf in respect of the matters referred to in sub-section (1) and such other matters as may be deemed necessary and relevant;

(b) make such further inquiry as may appear to it to be necessary;

(c) give due consideration to the request, if any, made by the applicant for reconsideration of any of the conditions conveyed to him;

(d) record its opinion after consulting the Academic Council on the question whether the application should be granted or refused either in whole or in part, stating the result of any inquiry under clauses (a) and (b) of sub-section (1);

Provided that where the views of the Academic Council with regard to the affiliation of a college are not acceptable to the Executive Council, the

Executive Council shall refer the matter to the Academic Council, with or without its comments, and the Academic Council shall communicate again to the Executive Council its views with regard to the affiliation of the College.

(4) The Registrar shall submit the application and all proceedings, if any, of the Academic Council and the Executive Council relating thereto to the State Government which shall after such inquiry as may appear to it to be necessary grant or refuse the application or any part thereof.

(5) Where the application or any part thereof is granted, the order of the State Government shall specify the courses of instruction in respect of which the college is affiliated and where the application or any part thereof is refused, the grounds of such refusal shall be recorded.

(6) As soon as possible after the State Government makes its order, the Registrar shall submit to the Executive Council and the Academic Council a full report regarding the application, the action taken thereon under sub-section (3) to (5) and of proceedings connected therewith.

(7) xxx xxx xxx
(8) xxx xxx xxx "

Provisions are made in the subsequent sections for withdrawal of affiliation where a college fails to fulfil the conditions imposed under the Ordinance made under the Act or the conditions of affiliation or if the college is conducted in a manner which is prejudicial to the interest of education. The scheme of the University Act reveals an unmistakable underlying object of ensuring a high standard of education and encouraging excellence in the academic field through establishment of an autonomous institution.

6.1 The Gujarat Homoeopathic Act, 1963 (the 'State Act' for short) is enacted to consolidate and amend the law relating to the registration of practitioners of the Homoeopathic system of medicine in the State and mainly provides for the constitution of the State Council and registration of practitioners. The provisions which are

heavily relied upon by the respondent are found in Sections 15 and 28 of which the relevant parts read as under:

"Sec.15 (1): Subject to such conditions as may be prescribed by or under the provisions of this Act, the powers, duties and functions of the Council shall be :-

(a) to (e) xxx xxx xxx

(f) to grant degrees, diplomas and marks of honour;

(g) to award stipends, scholarships, medals, prizes and other rewards;

(h) to recognise institutions for the purpose of giving instructions for the courses leading to the examinations held by the Council or to cancel such recognition;

(i) to recommend the inclusion of any degree, diploma, certificate or award in the First Schedule or to recommend the removal of any degree, diploma, certificate or award from the First Schedule.

(j) to (s) xxx xxx xxx

(2) xxx xxx xxx"

"Sec.28 (1): Every institution recognised under this section shall be entitled to train students for the examinations of the Council for which it is recognized.

(2) Any institution desirous of recognition under this Act shall send an application giving full information in respect of the following matters, to the Registrar, so as to reach him at least two months before the commencement of the first term of study preparatory to the examination for which recognition is sought namely:-

(a) the constitution and personnel of the managing body;

(b) subjects and courses in which it gives or

proposes to give instruction and the examination for which it seeks recognition;

(c) accommodation, equipment and the number of students for whom provision has been or is proposed to be made;

(d) the strength of the staff, their salaries, qualifications and the research work carried out by them;

(e) fees levied or proposed to be levied and the financial provision made for capital expenditure on buildings and equipment and for continued maintenance and efficient working of the institution;

(f) facilities for clinical training and the number of beds maintained for the purpose; and

(g) such other particulars as the Council may specify by regulations;

Provided that no application shall be entertained by the Registrar unless the institution agrees in writing to give all facilities to any inspector, member, visitor or any other person authorised by the Council to make an inspection or enquiry or to attend any examination under sub-sections (3) to (7).

(3) The Registrar shall place the application before the Council, and if an Examination Committee has been appointed, before the said Committee, and the Council or the said Committee, as the case may be, may direct the Registrar to call for any further information which it may deem necessary. The Council or the said Committee may also direct a local inquiry to be made by a competent person or persons authorised by it in this behalf.

(4) After receiving the report of such local inquiry or of the Examination Committee, as the case may be, and after making such further inquiry as may be necessary, the Council shall forward the application together with its report to the State Government with its opinion whether

the recognition asked for should or should not be granted. The State Government may thereupon grant or refuse the recognition or may grant it subject to such conditions as it deems fit. The decisions of the State Government shall be final.

(5) It shall be the duty of the Council to secure the maintenance of an adequate standard of proficiency for the practice of the Homoeopathic system of medicine. For the purpose of securing such standard, the Council shall have authority to call on the governing body or authorities of any recognised institution to permit inspectors or any member or visitor appointed by the Council in this behalf to inspect the recognised institution and the hospitals attached to them and to attend and be present at all or any of the examinations held by the institution. Every recognized institution shall comply with any reasonable direction issued by the Council from time to time.

(6) to (9) xxx xxx xxx"

The Phrase "recognized institution" is defined in Section 2 (12) of this Act as under:

"Sec.2 (12) 'recognized institution' means any institution recognised by the Council under section 28 for giving instructions in the courses leading to the examinations held by the Council."

It is seen that the recognition of the institution for the purpose of Section 28 quoted above is, by virtue of the definition of the 'recognized institution', relevant only for the courses leading to the examinations held by the Council which is defined under Section 2 (2) to mean, "the Council of Homoeopathic System of Medicine, Gujarat, constituted under Section 3."

6.2 The Homoeopathy Central Council Act, 1973, (the 'Central Act' for short) enacted to provide for the constitution of a Central Council of Homoeopathy and the maintenance of a Central Register of Homoeopathy and for matters connected therewith contains the following provisions which are relevant:

"Sec.13 (1): Recognition of medical qualifications granted by certain medical institutions in India: The medical qualifications granted by any University, Board

or other medical institution in India which are included in the Second Schedule shall be recognised medical qualifications for the purposes of this Act.

(2) Any University, Board or other medical institution in India which grants a medical qualification not included in the Second Schedule may apply to the Central Government to have any such qualification recognised, and the Central Government, after consulting the Central Council, may, by notification in the Official Gazette, amend the Second Schedule so as to include such qualification therein and any such notification may also direct that an entry shall be made in the last column of the Second Schedule against such medical qualification only when granted after a specified date."

The term "medical institution" is defined in Section 2 (1) (e) of the said Act as under:

"Sec.2 (1)(e) 'medical institution' means any institution within or without India which grants Degrees, Diplomas or licences in Homoeopathy."

The term "recognised medical qualification" is defined in Section 2 (1) (g) as under:

"Sec.2 (1)(g) 'recognized medical qualification' means any of the medical qualifications in Homoeopathy included in the Second or the Third Schedule."

The other relevant provisions are as under:

"Sec.16: Power to require information as to courses of study and examinations: Every University, Board or medical institution in India which grants a recognized medical qualification shall furnish such information as the Central Council may, from time to time, require as to the courses of study and examinations to be undergone in order to obtain such qualification, as to the ages at which such courses of study and examinations are required to be undergone and such qualification is conferred and generally as to the requisites for obtaining such qualification.

Sec.17 (1): Inspectors at examinations: The

Central Council shall appoint such number of medical inspectors as it may deem requisite to inspect any medical college, hospital or other institution where education in Homoeopathy is given, or to attend any examination held by an University, Board or medical institution for the purpose of recommending to the Central Government recognition of medical qualifications granted by that University, Board or medical institution.

(2) The medical inspectors shall not interfere with the conduct of any training or examination but shall report to the Central Council on the adequacy of the standards of education including staff, equipment, accommodation, training and other facilities prescribed for giving education in Homoeopathy, as the case may be, or on the sufficiency of every examination which they attend.

(3) The Central Council shall forward a copy of any such report to the University, Board or medical institution concerned, and shall also forward a copy with the remarks of the University, Board or medical institution thereon, to the Central Government.

Sec.18 (1) Visitors at examinations: The Central Council may appoint such number of visitors as it may deem requisite to inspect any medical college, hospital or other institution where education in Homoeopathy is given or to attend any examination for the purpose of granting recognized medical qualification.

(2) Any person, whether he is a member of the Central Council or not may be appointed as a visitor under this section but a person who is appointed as an inspector under section 17 for any inspection or examination shall not be appointed as a visitor for the same inspection or examination.

(3) The visitors shall not interfere with the conduct of any training or examination but shall report to the President of the Central Council on the adequacy of the standards of education including staff, equipment, accommodation, training and other facilities prescribed for giving education in Homoeopathy or on the sufficiency of every examination which they

attend.

(4) The report of a visitor shall be treated as confidential unless in any particular case the President of the Central Council otherwise directs;

Provided that if the Central Government requires a copy of the report of a visitor, the Central Council shall furnish the same.

Sec.19 (1) Withdrawal of recognition: When upon report by the inspector or the visitor it appears to the Central Council-

(a) that the courses of study and examination to be undergone in or the proficiency required from candidates at any examination held by any University, Board or medical institution, or

(b) that the staff, equipment, accommodation, training and other facilities for instruction and training provided in such University, Board or medical institution or in any college or other institution affiliated to the University,

do not conform to the standard prescribed by the Central Council, the Central Council shall make a representation to that effect to the Central Government.

(2) After considering such representation, the Central Government may send it to the Government of the State in which the University, Board or medical institution is situated and the State Government shall forward it along with such remarks as it may choose to make to the University, Board or medical institution with an intimation of the period within which the university, Board or medical institution may submit its explanation to the State Government.

(3) On the receipt of the explanation or where no explanation is submitted within the period fixed then on the expiry of that period the State Government shall make its recommendations to the Central Government.

(4) The Central Government after making such further inquiry if any, as it may think fit, may, by notification in the Official Gazette, direct that an entry shall be made in the Second Schedule against the said medical qualification declaring that it shall be a recognised medical qualification only when granted before a specified date or that the said medical qualification if granted to students of a specified college or institution affiliated to any University shall be recognized medical qualification only when granted before a specified date or as the case may be, that the said medical qualification shall be recognised medical qualification in relation to a specified college or institution affiliated to any University only when granted after a specified date."

Sec.20 (1) Minimum standards of education in Homoeopathy: The Central Council may prescribe the minimum standards of education in Homoeopathy required for granting recognised medical qualifications by Universities, Boards or medical institutions in India.

(2) Copies of the draft regulations and of all subsequent amendments thereof shall be furnished by the Central Council to all State Governments and the Central Council shall, before submitting the regulations or any amendment thereof as the case may be, to the Central Government for sanction, take into consideration the comments of any State Government received within three months from the furnishing of the copies as aforesaid.

Sec.33 (1): The Central Council may, with the previous sanction of the Central Government, make, by notification in the Official Gazette, regulations generally to carry out the purposes of this Act, and, without prejudice to the generality of this power, such regulations may provide for-

(a) to (h): xxx xxx xxx

(i) the courses and period of study of practical training to be undertaken, the subjects of examination and the standards of proficiency therein to be obtained, in

any University, Board or medical institution for grant of recognised medical qualification;

(j) the standards of staff, equipment, accommodation, training and other facilities for education in Homoeopathy;

(k) the conduct of professional examinations, qualifications of examiners and the conditions of admission to such examinations;

(l) to (p) xxx xxx xxx

(2) The Central Government shall cause every regulation made under this Act to be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation."

6.3 In exercise of the powers under Section 33 as above, the CCH has made Homoeopathy (Minimum Standards of Education) Regulations, 1983; Homoeopathy (Degree Course) B.H.M.S. Regulations, 1983 and other regulations. Under the Homoeopathy (Minimum Standards of Education) Regulations, 1983, 'Homoeopathic College' is defined in Section 2 (v) to mean "a Homoeopathic Medical College affiliated to a Board or University and recognised by the Central Council". These regulations contain detailed provisions pertaining to the requirements of staff, equipment, training and other facilities etc. in the Homoeopathic Colleges. The Homoeopathy (Degree Course) B.H.M.S. Regulations, 1983 provides for admission to the course, curricula, syllabus etc.

6.4 Under the Constitution, the matter of education, including technical education, medical education and universities, subject to the provisions of Entries 63,

64, 65 and 66 of List-I, is covered by Entry 25 of the Concurrent List; while Entries 63, 64, 65 and 66 in the Union List include coordination and determination of standards in institutions for higher education or research and scientific and technical institutions.

7. The respondents have sought to justify and defend the impugned order mainly on the ground, and it is also one of the grounds of the impugned order, that the power to grant recognition to the educational institution vests in the State Government under Section 28 of the Gujarat Homoeopathic Act, 1963 and not in the CCH. However, it can be clearly seen from the definition of the "recognized institution" in Section 2 (12) of the said Act and the provisions of Section 28, that the recognition of an institution under the State Act is relevant only for the courses leading to the examinations held by the State Council. It is nobody's case that the proposed college of the petitioner is going to conduct a course leading to any examination held by the State Council. It is altogether a different matter where under the Central Act itself the CCH might consult or seek assistance of any State agency in the discharge of its functions.

7.1 The other connected aspect of the contentions of the respondent is that the Central Act is nowhere providing for recognition of a "medical institution" as distinguished from a "medical qualification". It is true that a clear provision or procedure for granting recognition to a 'medical institution' is not provided for either in the Central Act or the Regulations made thereunder. However, the conjoint reading of Sections 13, 19 and 20 of the Central Act and the Homoeopathy (Minimum Standards of Education) Regulations, 1983 reveals a scheme under which Homoeopathic Colleges are sought to be regulated and standards of education in them ensured under constant vigil of the HCC and under the pain of withdrawal of recognition. In this context it was vehemently argued by the Government Pleader that it is still the Central Government and not the C.C.H. which recognizes a 'medical qualification' and not a 'medical institution'. This argument appears attractive on a facile view of the matter.

7.2 Section 13 of the Central Act provides for inclusion into the Second Schedule of the medical qualifications granted by any University, Board or other medical institution in India. The power to amend the Second Schedule so as to include the qualification granted by any University, Board or other medical

institution is conferred upon the Central Government which may do so after consulting the Central Council. By Section 2 (1) (e), "Medical Institution" is defined to mean 'any institution within or without India which grants degree, diplomas or licences in homoeopathy'. Thus, a University which grants a degree in homoeopathy and the degree granted by it are both included in the Second Schedule. The medical qualification granted and the University granting it cannot be separated for the reason that under the provisions of sub-section (1) of Section 13 what can be included in the Second Schedule for being a recognised medical qualification, is the medical qualification granted by an University, Board or other medical institution in India. Sub-section (2) of Section 13 makes it further clear by providing for an application to the Central Government by the University etc. for recognition of the medical qualification granted by it. Section 19 provides for a representation by the C.C.H. to the Central Government where it appears that the course of study, examination of candidates or staff, equipment, accommodation, training and other facilities for inspection etc. in any University or any college affiliated to any University are not conforming to the standards prescribed by regulations. The Central Government is empowered to send such representation of the CCH to the Government of the State (in which the University, Board or medical institution is situated) which has to forward such representation with its remarks to the University or the institution for its explanation to the State Government. The State Government is empowered to then make its recommendation to the Central Government and the Central Government is empowered to derecognise the medical qualification by notification in the Official Gazette directing that the medical qualification granted to the students of a specified college or institution affiliated to any University shall be a recognised medical qualification only when granted before or after a specified date. It has to be noted here that these provisions of Section 19 entitled "withdrawal of recognition" requiring the Council to make a representation to the Central Government covers in its sweep the University or the medical institution or any college affiliated to a University which grants degree, diploma or licence in homoeopathy. The fact of not conforming to the standard prescribed by the Central Council may culminate into an effective derecognition of a recognised medical qualification with reference to a particular institution from a particular date by amendment of the Second Schedule. But it does not follow that such representation regarding the institution not conforming to the standards can be made only in respect

of an institution which already finds a place in the Second Schedule. Thus, there is a distinct but negative and indirect provision for derecognition of a specified college or institution and the qualification granted by it. Therefore, it cannot be held that what can be recognised under the Central Act is not a medical institution but only a medical qualification. The recognition of a medical qualification by inclusion in the Second Schedule necessarily recognises the institution granting such qualification, but the recognition of only a college or University may not necessarily lead to recognition of the degree or diploma awarded by it. Full flexibility is allowed to the CCH to recognize an institution in respect of particular years and to have its degree recognized for particular years, albeit with the authority of suitably amending the Second Schedule remaining with the Central Government.

7.3 The Homeopathy (Minimum Standards of Education) Regulations, 1983 defines in Regulation 2 (v) a 'Homeopathic College' to mean a Homoeopathic Medical College affiliated to a Board or University and recognised by the Central Council. Thus, power for granting recognition to a Homoeopathic College is implied although such a college and the University to which it may be affiliated and the degree to which the course imparted therein might not have yet been included in the Second Schedule to be a 'recognised medical qualification'. Thus, the provisions for recognition of an institution in the Central Act are not parallel to Section 28 of the State Act which directly and expressly provides for recognition of an institution. However, that does not mean that there is a void in the Central Act which can be filled up by the State Government by resorting to the provisions of the State Act and assuming power of granting or refusing to grant recognition which power under the State Act is only meant to be exercised in respect of the institutions giving instructions in the courses leading to examinations held by the State Council. In this view of the matter, such grounds and contentions canvassed for the respondents as are founded upon the baseless assumption of power to grant approval and recognition under the State Act have to be rejected as misconceived.

8. The grounds and contentions regarding necessity of obtaining opinion and prior approval of the State Council or a No Objection Certificate from the Health & Family Welfare Department before seeking recognition from the State Council under the State Act are not only not supported by any legal provision but, in fact, they are

inconsistent with the scheme and provisions of the Central Act and, therefore, add to the irrelevant considerations on which the impugned order is based. Thus, when the powers exercised and the conditions imposed by the State Government under the State Act are found and held to have no legal basis, the impugned order rests on an admittedly defective and inconclusive inquiry held against the petitioner in respect of another college on the basis of a fake complaint. The matters in respect of which a fresh one-member inquiry is appointed and awaiting whose report affiliation is denied, are as yet allegations only. The impugned order does not reproduce or refer to the findings of the first three-member inquiry. Thus, the whole inchoate and inconclusive matter of the inquiries into the affairs of the petitioner-Trust and its another college appears to have been brought into consideration of the application for affiliation to a different college of the same Trust to cast a shadow of doubt on the credentials of the petitioner without bringing any concrete and reliable material on record. Therefore, the impugned order cannot be sustained on the basis of mere vague allegations at best creating doubts against the credentials of the petitioner without any relevant and reliable material on record.

9. As for the third aspect of inadequate infrastructure forming the basis of the impugned order, the impugned order does not reveal any inquiry worth the name as envisaged in the provisions of sub-section (4) of Section 35 of the University Act. The impugned order dwells upon and the learned Government Pleader has heavily relied upon the deficiencies in the infrastructure as revealed in the local inspection report forwarded by the University along with the application for affiliation. The report itself is not placed on record. The learned Government Pleader submitted that the deficiencies described in vague terms in the impugned order were sufficient, valid and relevant reason for denying affiliation to the petitioner's college. Factually, the Academic Council of the University had, by Resolution No.8 dated 29.3.2000, recommended to the Executive Council affiliation of the petitioner's college assuming prior sanction of the Government. The Executive Council had by Resolution No.7 dated 9.4.2000 resolved to consider the recommendation made by the Academic Council and to take deposit of Rs.20 lakhs from the Trust, the interest of which was to be used by the University. And thereafter, the University had informed the petitioner that the process of according affiliation to its college at the university level had been completed and had

requested it to deposit the sum of Rs.20 lakhs in the name of the Registrar. Thus, after an inspection and report of a Local Inquiry Committee of the University and acceptance of the report by the Academic and Executive Councils, the University appears to have completed the process of granting affiliation at its level. It was contended on behalf of the petitioner that the impugned order was arbitrary insofar as, without any further inquiry, the Government found the infrastructure and facilities in the college to be inadequate on the same material on the basis of which the University completed the process of granting affiliation at its level. On the one hand, even as the reports and resolutions of the University were with the State Government along with the application for affiliation since April 2000, a direction was issued to the President of the Council of Homoeopathic System of Medicine, Gujarat State, on 22.6.2000 to consider the proposal of starting the college in question. The respondent have heavily relied upon the detailed inspection report dated 19.8.2000 (at Annexure-X) of the Inspection Committee which has also pointed out certain infrastructural deficiencies and offered its opinion and general comments on justifiability of a women's Homoeopathic College. The worth and authority of the opinion and comments of the said inquiry report need not be gone into as the point is that the said report was not pressed into service and relied upon in the impugned order to contradict the report and recommendation of the University. Nor did the respondent have any comment on the inspection carried out and the decision to grant recognition taken by the CCH vide its letter dated 11.9.2000. On the other hand, the State Government itself requested the petitioner by its letter dated 27.9.2000 to deposit a sum of Rs.6 lakhs by way of fixed deposit for six years in the joint name of Registrar, Bhavnagar University and the President of the petitioner Trust and submit a certified copy of the receipt of such deposit in connection with the grant of prior approval to the college of the petitioner.

9.1 As for the reliance placed upon the report and recommendation of the University in support of the impugned order, it can be seen that under the provisions of Section 35 of the University Act, a college applying for affiliation has to satisfy the University in respect of the matters detailed in clauses (a) to (l) of sub-section (1), it can be subjected to several conditions and after a local inquiry to be made by competent persons, an opinion on the question whether the application for affiliation should be granted or refused either in whole or in part has to be recorded. In the

nature of things and as indicated by the aforesaid provisions, the application for affiliation has to be decided on the basis of certain assurances and conditions to be imposed as all the necessary infrastructure, facilities, staff etc. may not be in existence at the stage when an application for affiliation is made by a new college. If keeping this in mind the expert bodies of the autonomous University approve or recommend affiliation of a college, it would require an overwhelming consideration and stronger reasons supported by reliable relevant data for the Government to refuse the application for affiliation. In the facts of this case, the allegations and grounds of inadequate infrastructure, without support of any material or independent inquiry, are found and held to be irrational and unreasonable particularly in view of the recognition duly granted by CCH after its own inquiry.

9.2 Similarly, in view of the statement made at the Bar that this year the number of candidates seeking admission to Homoeopathic Colleges are approximately four times the number of seats available, the consideration of seats remaining vacant last year would be irrelevant. As noted elsewhere in this judgment, the respondent have already accorded affiliation to two more new Homoeopathic Colleges this year and undertook to decide the application for affiliation of a third one within the next week. In these facts and circumstances, the grounds and submissions regarding excess number of seats and mushroom growth of colleges can only lend credence to the allegations of hostile discrimination.

10. The other sweeping challenge to the impugned order involves a serious legal controversy. The learned counsel for the petitioner submitted that after the college of the petitioner being recognised by the CCH under the Central Act and the necessary process of affiliation having been completed at the University level, the State Government was left with no role to play in the matter and the provision for the granting or refusing the application for affiliation under Section 35 (4) of the University Act was repugnant to the Central Act or at best a mere formality. The learned counsel heavily relied upon the observations of this Court quoted earlier in paragraph 2 herein and the judgment of the Apex Court in JAYA GOKUL EDUCATIONAL TRUST case (AIR 2000 SC 1614) (supra). In the facts of that case, a self-financing Engineering College having obtained approval of All India Council for Technical Education (AICTE) was refused the sanction for setting up the college by the Kerala Government where the affiliating

University was required to only obtain the views of the State Government. The relevant provision in sub-clause (k) of Section 10 (1) of AICTE Act provided for grant of approval for starting new technical institutions by the Council under that Act. Whereas Clause 9 (7) of the Kerala University First Statute required the Syndicate of the University to decide whether affiliation was to be granted or refused after ascertaining the views of the Government. After referring to the relevant provisions and the judgments in STATE OF TAMIL NADU v. ADHIYAMAN EDUCATIONAL & RESEARCH INSTITUTE [(1995) 4 SCC 104], it is held and observed as under:

"22. As held in the Tamil Nadu case [1995 AIR SCW 2179], the Central Act of 1987 and in particular Section 10 (K) occupied the field relating the 'grant of approvals' for establishing technical institutions and the provisions of the Central Act alone were to be complied with. So far as the provisions of the Mahatma Gandhi University Act or its statutes were concerned and in particular statute 9 (7), they merely required the University to obtain the 'views' of the State Government. That could not be characterised as requiring the "approval" of the State Government. If, indeed, the University statute could be so interpreted, such a provision requiring approval of the State Government would be repugnant to the provisions of Section 10 (K) of the AICTE Act, 1987 and would again be void. As pointed out in the Tamil Nadu case there were enough provisions in the Central Act for consultation by the Council of the AICTE with various agencies, including the State Governments and the Universities concerned. The State Level Committee and the Central Regional Committees contained various experts and State representatives. In case of difference of opinion as between the various consultees, the AICTE would have to go by the views of the Central Task Force. These were sufficient safeguards for ascertaining the views of the State Governments and the Universities. No doubt the question of affiliation was a different matter and was not covered by the Central Act but in the Tamil Nadu case, it was held that the University could not impose any conditions inconsistent with the AICTE Act or its Regulation or the conditions imposed by the AICTE. Therefore, the procedure for obtaining the affiliation and any conditions which could be

imposed by the University, could not be inconsistent with the provisions of the Central Act. The University could not, therefore, in any event have sought for 'approval' of the State Government.

23. Thus we hold, in the present case that there was no statutory requirement for obtaining the approval of the State Government and even if there was one,it would have been repugnant to the AICTE Act. The University Statute 9 (7) merely required that the 'views' of the State Government be obtained before granting affiliation and this did not amount to obtaining 'approval'. If the University statute required 'approval', it would have been repugnant to the AICTE Act. Point 1 is decided accordingly."

The Apex Court also factually found the State Government's refusal to grant permission to be illegal and void on merits with the observations as under:

"Here the letter of approval of the AICTE dated 30.4.1995 showed that the Central Task Force had given its approval and the said approval was based also on the inspection by the Expert Committee of the AICTE. Hence the State Government cannot rely upon any contrary opinion of the Director of Technical Education. if the State Government had any other valid objections, its only remedy was to place its objections before the AICTE Council under the AICTE Act or before the Committees etc..."

It is also held that:

"The State could not have any policy outside the AICTE Act and indeed if it had a policy, it should have placed the same before the AICTE and that too before the latter granted permission. Once that procedure laid down in the AICTE Act and regulations had been followed under Regulation 8 (4), and the Central Task Force had also given its favourable recommendations, there was no scope for any further objection or approval by the State."

Thus, in the facts of that case, in short, the University's report was in favour of the institution and

the only requirement was for the University to obtain the views of the State Government and it was held that the procedures and conditions for affiliation could not be inconsistent with the provisions of the Central Act, in particular Section 10 (1) (k) of the Regulations. It was further held that the University ought to have considered the grant of final or further affiliation without waiting for any approval from the State Government and should have acted on the basis of the permission granted by the AICTE and other relevant factors in the University Act or statutes, which were not inconsistent with the AICTE Act or its Regulations.

10.1 It was submitted that on the same analogy and applying the ratio of the above judgment, the provision empowering the State Government to grant or refuse to grant affiliation would be redundant and repugnant in view of the recognition granted by the CCH in the facts of this case. It was fairly conceded that the Central Act in this case did not contain a provision similar to sub-clause (k) of sub-section (1) of Section 10 of the AICTE Act for granting approval for starting a new institution. Instead, the only direct provision regarding recognition of a college by the CCH is found in the form of the definition in Regulation 2 (v) under which the necessary and simultaneous conditions for being a "Homoeopathic College" are affiliation to a Board or University and recognition by the Central Council. Thus, affiliation to a Board or University is a necessary condition provided under the Central Act itself and, therefore, the provisions regarding affiliation to a University as may be found in the State Act cannot be held to be repugnant to any provisions of the Central Act.

10.2 Another important aspect of this issue, as submitted by the learned counsel for the petitioner, is that there are parallel and overlapping provisions in the University Act and the Regulations made under the Central Act regarding the subjects of staff, equipment, training, facilities, accommodation etc. and that also creates duplication and repugnancy. However, this issue may arise after a 'Homoeopathic College' comes into existence in the eye of law upon being affiliated to a University and recognised by the CCH; but as long as one of the conditions is not satisfied, it cannot be subject to the Regulations under the Central Act. Therefore, at the initial stage of seeking and obtaining affiliation, the dichotomy does not arise.

11. Reading the statement of objects and reasons

preceding the Homoeopathy Central Council Act, 1973, it was seen that minimum standards for admission, duration of course of training, details of curricula and syllabi of studies of Homoeopathy and the title of degree or diploma varied from State to State and even from institution to institution in the same State. The Homoeopathy Advisory Committee had recommended that in order to maintain uniformity, all the courses had to be standardised as prescribed by the Committee. Despite several States having constituted State Boards or Councils, there was no Central Legislation for the regulation of practise or for minimum standards for training and conduct of examinations in the system of medicine on all India basis. Therefore, a statutory Central Council on the lines of the Medical Council of India was a pre-requisite whose main functions would be to evolve uniform standards of education and registration of practitioners. Referring to these objects and reasons of the Central Act and the provisions and regulations made thereunder, it was submitted that any provisions in any State Act which were repugnant to or overstepping on a field covered under the Central Act cannot operate under the provisions of Article 254 of the Constitution. It cannot be gainsaid that the subject of co-ordination and determination of standards in institutions for higher education squarely falls in Entry 66 of the Union List in the Seventh Schedule to the Constitution. It also, therefore, follows that if any provision of a State Law is repugnant to any provision of law made in respect of the said subject-mater by the Parliament, the provisions of the State Law to the extent of the repugnancy would be void. In this context the judgment of the Supreme Court in STATE OF TAMIL NADU v. ADHIYAMAN EDUCATIONAL & RESEARCH INSTITUTE [(1995) 4 SCC 104] was relied upon on behalf of the petitioner. In the context of All India Council for Technical Education Act, 1987, the Central Act and the State Law viz. Tamil Nadu Private Colleges (Regulation) Act, after a detailed reference to the particular provisions, the Apex Court has observed as under:

> "27..... What is further, the primary object of the Central Act, as discussed earlier, is to provide for the establishment of an All India Council for Technical Education with a view, among others, to plan and coordinate the development of technical education system throughout the country and to promote the qualitative improvement of such education and to regulate and properly maintain the norms and standards in the technical education system which

is a subject within the exclusive legislative field of the Central Government as is clear from Entry 66 of the Union List in the Seventh Schedule. All the other provisions of the Act have been made in furtherance of the said objectives. They can also be deemed to have been enacted under Entry 25 of List III. This being so, the provisions of the State Act which impinge upon the provisions of the Central Act are void and, therefore, unenforceable. It is for these reasons that the appointment of the High Power Committee by the State Government to inspect the respondent-Trust was void as has been rightly held by the High Court."

It is further observed in paragraph 30 as under:

"30. A comparison of the Central Act and the University Act will show that as far as the institutions imparting technical education are concerned, there is a conflict between and overlapping of the functions of the Council and the University. Under Section 10 of the Central Act, it is the Council which is entrusted with the power, particularly, to allocate and disburse grants, to evolve suitable performance appraisal systems incorporating norms and mechanisms for maintaining accountability of the technical institutions, qualifications, assessment and examinations, fixing norms and guidelines for charging tuition fee and other fees, granting approval for starting new technical institutions or introducing new courses or programmes, to lay down norms or granting autonomy to technical institutions, providing guidelines for admission of students, inspecting or causing to inspect colleges, for withholding or discontinuing of grants in respect of courses and programmes, declaring institutions at various levels and types fit to receive grants, advising the Commission constituted under the Act for declaring technical educational institutions as deemed universities, setting up of National Board of Accreditation to periodically conduct evaluation on the basis of guidelines and standards specified and to make recommendations to it or to the Council or the Commission or other bodies under the Act regarding recognition or de-recognition of the institution or the programme conducted by it. Thus, so far as these matters are concerned, in the case of the

institutes imparting technical education, it is not the University Act and the University but it is the Central Act and the Council created under it which will have the jurisdiction. To that extent, after coming into operation of the Central Act, the provisions of the University Act will be deemed to have become unenforceable in case of technical colleges like the engineering colleges. As has been pointed out earlier, the Central Act has been enacted by Parliament under Entry 66 of List I to coordinate and determine the standards of technical institutions as well as under Entry 25 of List III. The provisions of the University Act regarding affiliation of technical colleges like the engineering colleges and the conditions for grant and continuation of such affiliation by the University shall, however, remain operative but the conditions that are prescribed by the University for grant and continuance of affiliation will have to be in conformity with the norms and guidelines prescribed by the Council in respect of matters entrusted to it under Section 10 of the Central Act." (emphasis supplied)

The following conclusion drawn by the Hon'ble Supreme Court after a detailed discussion of the relevant aspects is important in the facts of this case:

"41 (i) The expression 'coordination' used in Entry 66 of the Union List of the Seventh Schedule to the Constitution does not merely mean evaluation. It means harmonisation with a view to forge a uniform pattern for a concerted action according to a certain design, scheme or plan of development. It, therefore, includes action not only for removal of disparities in standards but also for preventing the occurrence of such disparities. It would, therefore, also include power to do all things which are necessary to prevent what would make 'coordination' either impossible or difficult. This power is absolute and unconditional and in the absence of any valid compelling reasons, it must be given its full effect according to its plain and express intention."

11.1 A pertinent discussion is found in the judgment of a Constitutional Bench of the Supreme Court in DR.PREETI SRIVASTAVA v. STATE OF M.P. [(1999) 7 SCC 120] wherein it is observed as under:

"52. Mr.Salve, learned counsel appearing for the Medical Council of India has, therefore, rightly submitted that under the Indian Medical Council Act of 1956 the Indian Medical Council is empowered to prescribe, inter alia, standards of postgraduate medical education. In the exercise of its powers under Section 20 read with Section 33 the Indian Medical Council has framed regulations which govern postgraduate medical education. These regulations, therefore, are binding and the States cannot, in the exercise of power under Entry 25 List III, make rules and regulations which are in conflict with or adversely impinge upon the regulations framed by the Medical Council of India for postgraduate medical education. Since the standards laid down are in the exercise of the power conferred under Entry 66 of List I, the exercise of that power is exclusively within the domain of the Union Government. The power of the States under Entry 25 of List III is subject to Entry 66 of List I.

53. Secondly, it is not the exclusive power of the State to frame rules and regulations pertaining to education since the subject is in the Concurrent List. Therefore, any power exercised by the State in the area of education under Entry 25 of List III will also be subject to any existing relevant provisions made in that connection by the Union Government subject, of course, to Article 254."

12. The legal dicta as above is pressed into service to suggest that, even assuming the powers under the University Act to refuse or grant affiliation on certain conditions to be operative, the Government or the University cannot fix or impose the standards and levels of adequacy of infrastructure which are inconsistent with those prescribed by the CCH under the Central Act and the Regulations made thereunder. And consequently where, as in the facts of this case, the State Government denied affiliation for the alleged insufficiency regarding staff, equipment, training and such other facilities even as the same matters were covered by the provisions of the Central Act and the CCH had granted its recognition, consideration of the same matters by the State Government under the State Law was incompetent. The observations quoted in the earlier paragraph lend support to this submission.

12.1 The judgment of the Apex Court in THIRUMURUGA AKIRUPANANDA VARIYAR THAVATHIRU SUNDARA SWAMIGAL MEDICAL EDUCATIONAL & CHARITABLE TRUST [(1996) 3 SCC 15] was relied upon on behalf of the petitioner to submit that the requirement of a decision of the State Government on the application for affiliation may be dispensed with and the petitioner's college may be held and declared to be affiliated in terms of the decision of the University. However, in the facts of the case before the Supreme Court, even as parallel provision in the State Law regarding establishment of a medical college was held to be repugnant, the requirement of obtaining from the State Government, the "essentiality certificate" regarding desirability and feasibility of having the proposed college at the proposed location under the Regulations made under the Central Law was not quashed. Only the refusal of the State Government to grant such certificate on the basis of its policy of not permitting certain kind of colleges in the State was not upheld. And since the infrastructure of the college was already in place, the Court found it futile to direct the Government to reconsider the matter and ordered the Central Government not to insist upon the certificate. The facts and relevant provision in the said case before the Supreme Court are clearly distinguishable from those in the present case and hence the prayer to dispense with the decision of the State Government cannot be granted.

13. On consideration of the facts and legal position as above, it is held that the impugned order denying the grant of affiliation to the college of the petitioner is unreasonable, arbitrary and bad in law and, therefore, requires to be set aside. It is further held that the exercise of power under sub-section (4) of Section 35 of the Bhavnagar University Act, in making the impugned order is not based on considerations which are genuine, relevant and germane to the exercise of power and that, for these reasons, the application for affiliation could not have been rejected. It is also held that, in absence of any specific provision in the Central Act regarding establishment of an educational institution and there being an express provision for affiliation of a college to a University and the other Regulations of the Homoeopathy (Minimum Standards of Education) Regulations, 1983 being applicable only to such Homoeopathic College as is affiliated and recognised by the Central Council, the provisions of Section 35 of the Bhavnagar University Act are not repugnant, void or inoperative. However, the exercise of power under that section shall have to be in conformity with the provisions of the Homoeopathy Central Council Act, 1973 and the Regulations made thereunder.

14. The impugned order having been set aside as above, the State Government is directed to reconsider the petitioner's application for affiliation forwarded by the Bhavnagar University vide its letter dated 18.4.2000 and decide the same in accordance with law and in light of the observations made in this judgment.

15. It was stated at the Bar that the admissions to the Homoeopathic Colleges would commence from 22.1.2001 and the process is likely to last upto 31.1.2001. It was further stated that applications of such number of students for admissions in this homoeopathy course are received as are four times the number of seats available. However, if the admission process is unreasonably further delayed, seats may remain vacant on account of the students joining or continuing other courses of studies which they might have joined by now. In case of another Homoeopathy College where the affiliation was unduly delayed, this Court has, on 19.01.2001 in Special Civil Application No.201 of 2001, issued, on the basis of the statement made by the learned Government Pleader, a direction to decide the application for affiliation within two weeks and if the affiliation was granted, to allot students to that college through the centralised admission system.

16. In these facts and circumstances, it is necessary and in the interest of justice to direct the respondent No.1 to decide the application of the petitioner as directed hereinabove on or before 30.1.2001 and if it decides to grant affiliation, to forthwith, without waiting for any formalities to be completed, instruct and allow the respondent No.3 to offer and allot students on merits to the petitioner's college in accordance with the scheme of the centralised admission system. The petition is, thus, partly allowed and Rule is made absolute in terms as above with no order as to costs. Direct Service today.

Sd/-

(D.H.WAGHELA, J.)

(KMG Thilake)